IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 726 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

SANT PRASAD KASHIPARASAD SHARMA

Versus

STATE OF GUJARAT

Appearance:

MR VM DHOTRE for Petitioner

MR MA BUKHARI, A.P.P. for Respondent No. 1

MR MJ TRIVEDI for Respondent No. 2

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 14/09/2000

ORAL JUDGEMENT

This revision has been filed against the concurrent judgment and order of the trial Court as well as of the revisional Court confirming the findings of the trial Court convicting the revisionist under section 138

of the Negotiable Instruments Act and sentencing him to undergo one year's rigorous imprisonment and to pay fine of Rs.50,000=00. Out of the fine, Rs.25,000=00 was ordered to be paid to the complainant, and in case of default in depositing the fine within the time granted, the revisionist was required to undergo further rigorous imprisonment for a term of 4 months.

List has been revised thrice but none appeared on behalf of the revisionist. As such, Mr.Bukhari, learned APP on behalf of respondent no.1 and Mr.MJ Trivedi for respondent no.2 had been heard. The judgments of the two courts below have been examined.

The brief facts giving rise to this revision are as under :

A partnership business was started in the name and style of Ambica Surgical and Plastic Industries in November 1993 in which the complainant Tarlikaben R.Shah, her brother Kalpenkumar R.Shah and one minor Ravi Bipinbhai were partners. In the said partnership firm one machine was assembled for which Rs.35,000=00 was paid by the complainant on behalf of her brother Kalpenkumar Shah. The business of the partnership firm could not run properly hence, the partnership was dissolved on 22-6-1994. The revisionist accused was alleged to have issued a cheque of Rs.25,000=00 on 20-4-1995 to the complainant drawn on Punjab National Bank, Maninagar Branch bearing no.QYZ - 952993. The said cheque was dishonoured hence, a complaint was lodged under section 138 of the Negotiable Instruments Act on 30-9-1995. The Bank dishonoured the cheque because the amount was not sufficient in the account of the revisionist to pay the amount involved in the cheque.

The learned Judicial Magistrate after considering the defence version and the evidence adduced by the prosecution found that the charge under section 138 of the Negotiable Instruments Act was established beyond doubt against the revisionist. Accordingly revisionist was convicted and sentenced for one year's rigorous imprisonment and to pay fine of Rs.50,000=00. In case of default in payment of fine he was sentenced to undergo further rigorous imprisonment for four months, and if the fine was paid a sum of Rs.25,000=00 was ordered to be paid to the complainant.

Feeling aggrieved the revisionist preferred an appeal which was dismissed. The appellate Court confirmed the judgment and order of the trial Court. It is, therefore, this revision.

Since none is present on behalf of the revisionist, I have examined all the grounds taken in the memo of revision on which the order of the lower appellate Court has been assailed. I do not find any substance in any of the grounds on which the judgment of the lower appellate Court has been tried to be assailed.

Section 138 of the Negotiable Instruments Act provides where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid, either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with the bank, such person shall be deemed to have committed an offence and shall, without prejudice to any other provision of the Act, be punished with imprisonment for a term which may extend to one year, or with fine which may extend to twice the amount of the cheque, or with both.

One of the grounds of attack in the memo of revision is that the ingredients of section 138 of the Negotiable Instruments Act are not made out hence, the lower appellate Court committed an error in confirming the judgment and order of the trial Court. I do not find any merit in this ground for obvious reason that from the evidence of the record it appears that the cheque was issued by the revisionist and that it was in respect of his liability regarding the partnership business and that the cheque was dishonoured by the banker on the ground that the sum standing in the account of the revisionist was insufficient to honour the cheque. There is concurrent finding of the two courts below that the ingredients of section 138 of the Negotiable Instruments Act are fully established and I do not find any error in the aforesaid concurrent finding recorded by the two courts below.

It is, however, mentioned in one of the grounds in the memo of revision that the cheque was not handed over to the complainant. However, section 138 of the Negotiable Instruments Act does not require that the cheque should be handed over to the person in whose name it was issued. Consequently, there is no violation of section 138 of the Negotiable Instruments Act. Even if

the cheque was handed over to the brother of the complainant namely Kalpenkumar R.Shah, it does not amount to violation of the provisions of section 138 of the Negotiable Instruments Act.

The next ground of attack is that the cheque was blank cheque as well as it was not a valid cheque. This objection has no substance for two reasons : Firstly, the bank never objected that the cheque was not properly issued, signed and drawn. The objection of the bank was that the funds in the account of the revisionist were insufficient to honour the cheque. Secondly, the lower appellate Court has found on fact that though the cheque was signed by the revisionist and the name of the holder, date and amount were written in different inks but, this was done in presence of the revisionist and with his consent. Consequently, on this ground it cannot be said that no valid cheque was issued by the revisionist in the name of the complainant Tarlikaben R.Shah. The lower appellate Court has further found that no evidence has been given by the revisionist to establish that a blank cheque was issued by him as was alleged by him. On the other hand, the lower appellate Court has accepted the evidence of the complainant regarding the manner in which the cheque was signed and prepared in presence of the revisionist.

No other substantial ground has been raised in the memo of revision on which the findings concurrently recorded by the two court below can be disturbed. Other grounds in the memo of revision are nothing but repetition of the grounds discussed by me in the foregoing portion of this judgment. I, therefore, finds no illegality in the judgment of the lower appellate Court which has confirmed the judgment of the trial Court that the revisionist has committed an offence punishable under section 138 of the Negotiable Instruments Act.

Further, it has also to be seen in the revision whether the sentence awarded by the two courts below is reasonable on the facts and circumstances of the case. Section 138 of the Negotiable Instruments Act as quoted above provides three alternatives : (1) that the person who commits an offence under this section shall be punished with imprisonment of one year, (2) that he may be punished with fine which may extend to twice the amount of the cheque and, (3) that such person may be punished with sentence which may extend to one year and also to a fine which may extend to twice the amount of the cheque. It is clear from the judgment of the two courts below that out of three alternatives the third

alternative was adopted - namely, the revisionist was sentenced to maximum term of one year's rigorous imprisonment and also to pay maximum fine of Rs.50,000=00 which is double the amount for which the cheque was issued. The sentence, looking to the facts and circumstances of the case, appears to be severe and it has to be reduced. Considering the facts and circumstances of the case and the transaction between the parties and further finding that it was not the case where some stranger has cheated the complainant, I think that interest of justice will be served if the sentence is reduced to three months' rigorous imprisonment and the quantum of fine is reduced to Rs.30,000=00. Out of the fine of Rs.30,000=00 Rs.25,000 shall be paid to the complainant respondent no.2.

For the reasons stated above, the revision succeeds partly on the quantum of punishment. The finding of the guilt recorded by the two courts below against the revisionist is confirmed. The sentence awarded by the two courts below is reduced to three months rigorous imprisonment and fine of Rs.30,000=00 under section 138 of the Negotiable Instruments Act. It is informed that a sum of Rs.25,000=00 was deposited by the revisionist in this Court and out of that amount the respondent no.2 has been permitted to withdraw Rs.20,000=00 on furnishing undertaking. As such, the balance amount if not already deposited, be deposited by the revisionist within three weeks from today. Remaining amount of Rs.5,000=00 deposited in this Court shall be paid to respondent no.2 without any undertaking and the balance of Rs.5,000=00 will go in the accounts of the State - respondent no.1. In case of default in depositing the fine within a period of three weeks from today the revisionist shall further undergo rigorous imprisonment for fifteen days. The revisionist shall surrender within a period of three weeks.

14-9-2000. (D.C. Srivastava, J.)
/sakkaf